

**Unofficial Draft Copy**

As of: November 30, 2004 (8:27am)

LC5006

\*\*\*\* Bill No. \*\*\*\*

Introduced By \*\*\*\*\*

By Request of the \*\*\*\*\*

1 A Bill for an Act entitled: "An Act revising the medical  
2 malpractice legal panel act; requiring a claimant before the  
3 panel to pay half of the costs of the panel; increasing the  
4 maximum time in which a claim must be heard; requiring a record  
5 of the panel hearing; providing that the record, documentary  
6 evidence that is submitted, and panel decision are admissible in  
7 an action subsequently filed in a court; amending sections 27-6-  
8 204, 27-6-206, 27-6-207, 27-6-501, 27-6-502, 27-6-703, and 27-6-  
9 704, MCA; and providing an applicability date."

10  
11 Be it enacted by the Legislature of the State of Montana:

12  
13 **Section 1.** Section 27-6-204, MCA, is amended to read:

14 **"27-6-204. Authority to adopt rules.** The director, in  
15 consultation with the state bar of Montana and subject to  
16 approval of the supreme court, is authorized to adopt and publish  
17 rules of procedure necessary to implement and carry out the  
18 duties of the medical review panel. ~~No rules may be adopted,~~  
19 ~~however, which require a party to make a monetary payment as a~~  
20 ~~condition to bringing a malpractice claim before the medical~~  
21 ~~review panel."~~

22 {Internal References to 27-6-204: None.} \*

1           **Section 2.** Section 27-6-206, MCA, is amended to read:

2           **"27-6-206. Funding.** (1) There is a pretrial review fund to  
3 be administered by the director exclusively for the purposes  
4 stated in this chapter. The fund and any income from it must be  
5 held in trust, deposited in an account, and invested and  
6 reinvested by the director with the prior approval of the  
7 director of the Montana medical association. The fund may not  
8 become a part of or revert to the general fund of this state but  
9 is open to auditing by the legislative auditor.

10           (2) (a) To create the fund, a surcharge or assessment must  
11 be levied on all health care providers and a fee must be levied  
12 on each claimant who submits a case to the panel. The amount of  
13 the health care provider assessment must be set annually by the  
14 director and must be apportioned among physicians, dentists,  
15 podiatrists, hospitals, and other health care providers by group.  
16 Except as provided in subsection (2)(c), for the group of all  
17 physicians, the group of all dentists, the group of all  
18 podiatrists, the group of all hospitals, and the group of all  
19 other health care facilities, the amount of the assessment must  
20 be proportionate to the respective percentage of total health  
21 care providers brought before the panel that each group  
22 constitutes. The total number and group of health care providers  
23 brought before the panel must be determined from the annual  
24 report of the panel for the years preceding the year of  
25 assessment.

26           (b) Except as provided in subsection (2)(c), the amount of  
27 the assessment for the group of all:

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(i) hospitals must be proportionately assessed against each hospital on the basis of each hospital's total number of licensed hospital beds, whether used or not, as reflected in the most recent compilation of the department of public health and human services;

(ii) physicians must be equally assessed against all physicians;

(iii) dentists must be equally assessed against all dentists;

(iv) podiatrists must be equally assessed against all podiatrists; and

(v) other health care facilities must be equally assessed against all other health care facilities.

(c) The annual amount of the assessment levied against each health care provider may not be less than \$15. The total amount levied against all health care providers must be the amount estimated to be needed to finance one-half of the cost of administering this chapter, including panel proceedings, for the assessment year. The fee levied against a claimant must be determined and levied at the end of panel proceedings relating to that claimant and must equal one-half the costs of the panel that heard the claim.

(d) Surplus funds, if any, above the amount required for the annual administration of ~~the~~ this chapter must be retained by the director and used to finance the administration of this chapter in succeeding years, in which event the director shall reduce the annual health care provider assessment in subsequent

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years to not less than \$15 for each health care provider, and shall reduce the claimant's fee, commensurate with the proper administration of this chapter.

(3) The annual ~~surcharge~~ health care provider assessment must be paid on April 1 of each year.

(4) All unpaid health care provider assessments and claimants' fees bear a late charge fee equal to the judgment rate of interest. The late charge fee ~~is part of the annual surcharge for a health care provider may be added to the health care provider's next annual assessment~~. The panel may collect ~~the annual surcharge by an action at law~~ an unpaid health care provider assessment or claimant fee by any method allowed by law for the collection of a judgment."

{ Internal References to 27-6-206: \*  
27-6-207 }

**Section 3.** Section 27-6-207, MCA, is amended to read:

**"27-6-207. Panel audits.** (1) The panel must be audited by or at the direction of the legislative auditor in accordance with the powers and duties set forth in 5-13-304 and 5-13-309. The audit must include a determination of the adequacy, sufficiency, and reasonableness of the annual health care provider surcharge or assessment and claimant's fee provided for in 27-6-206.

(2) A copy of each audit report of the panel must be furnished to the supreme court.

(3) The cost of any audit of the panel performed pursuant to this section must be paid by the panel."

{ Internal References to 27-6-207: None. } \*

**Section 4.** Section 27-6-501, MCA, is amended to read:

**"27-6-501. Time and place of hearing.** (1) A date, time, and place for hearing ~~shall~~ must be fixed by the director subject to subsection (2), and prompt notice ~~thereof shall be~~ of the date, time, and place given to the parties involved, the attorneys, and the members of the panel. ~~In no instance may the date set~~ The date may not be more than ~~120 days~~ 6 months after the transmittal by the director of the application for review unless the panel finds good cause exists for extending the period.

(2) Panel hearings may be held in any county the panel considers necessary or advisable. The county commissioners or other governing authority shall provide, upon request of the director of the panel, suitable facilities for ~~any such~~ the hearing."

{ Internal References to 27-6-501: None. } \*

**Section 5.** Section 27-6-502, MCA, is amended to read:

**"27-6-502. Conduct of hearing.** (1) At the time set for hearing, the claimant submitting the case for review ~~shall~~ must be present and shall make a brief introduction of ~~his~~ the claimant's case, including a resume of the facts constituting the alleged professional malpractice which ~~he~~ the claimant is prepared to prove. The health care provider against whom the claim is brought and ~~his~~ the health care provider's attorney may be present and may make an introductory statement of ~~his~~ the

1 health care provider's case.

2 (2) Both parties may call witnesses to testify before the  
3 panel, ~~which witnesses shall. The witnesses must~~ be sworn.  
4 Medical texts, journals, studies, and other documentary evidence  
5 relied upon by either party may be offered and admitted if  
6 relevant. Written statements of facts by treating health care  
7 providers may be reviewed.

8 (3) The hearing ~~will~~ must be informal, ~~and no official~~  
9 ~~transcript may be made. The panel must keep a recording of the~~  
10 hearing by electronic device or have stenographic notes taken by  
11 a court reporter."

12 {Internal References to 27-6-502: None.} \*

13  
14 **Section 6.** Section 27-6-703, MCA, is amended to read:

15 **"27-6-703. Records of proceedings -- confidentiality.** The  
16 director shall maintain records of all proceedings before the  
17 panel, which must include the nature of the act or omissions  
18 complained of, ~~a brief summary of the evidence expressed the~~  
19 record of the hearing proceedings required by 27-6-502,  
20 documentary evidence admitted as provided in 27-6-502, the  
21 decision of the panel, and any majority or dissenting opinions  
22 filed. ~~Any~~ Unless a court action is subsequently filed on the  
23 claim, records which may identify any party to the proceedings  
24 may not be made public and are not subject to subpoena but are to  
25 be used solely for the purpose of compiling statistical data and  
26 facilitating ongoing studies of medical malpractice in Montana."

27 {Internal References to 27-6-703: None.} \*

Section 7. Section 27-6-704, MCA, is amended to read:

~~"27-6-704. Panel proceedings and decision privileged from disclosure~~ **Disclosure in court actions.** (1) A panel member may not be called to testify in a proceeding concerning the deliberations, discussions, decisions, and internal proceedings of the panel.

(2)(a) ~~The Subject to subsection (2)(b), the decision and the reasoning and basis for the decision of the panel, the record of the hearing, and the documentary evidence admitted at the hearing,~~ are ~~not~~ admissible as evidence in an action subsequently brought in a court of law.

(b) Anything in the record or documentary evidence must be otherwise admissible under the rules of evidence and statutes relating to evidence."

{Internal References to 27-6-704: None.} \*

NEW SECTION. **Section 8. {standard} Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 9. Applicability.** [This act] applies to causes of action that arise after [the effective date of this act].

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